

*Court of Appeals,*

JULY SESSION, 1819.

---

ARCHIBALD DENNY,  
JOHN SHEA, and  
WILLIAM HAMILTON,

*Appellants,*

and

DAVID HARVEY,

*Respondent.*

---

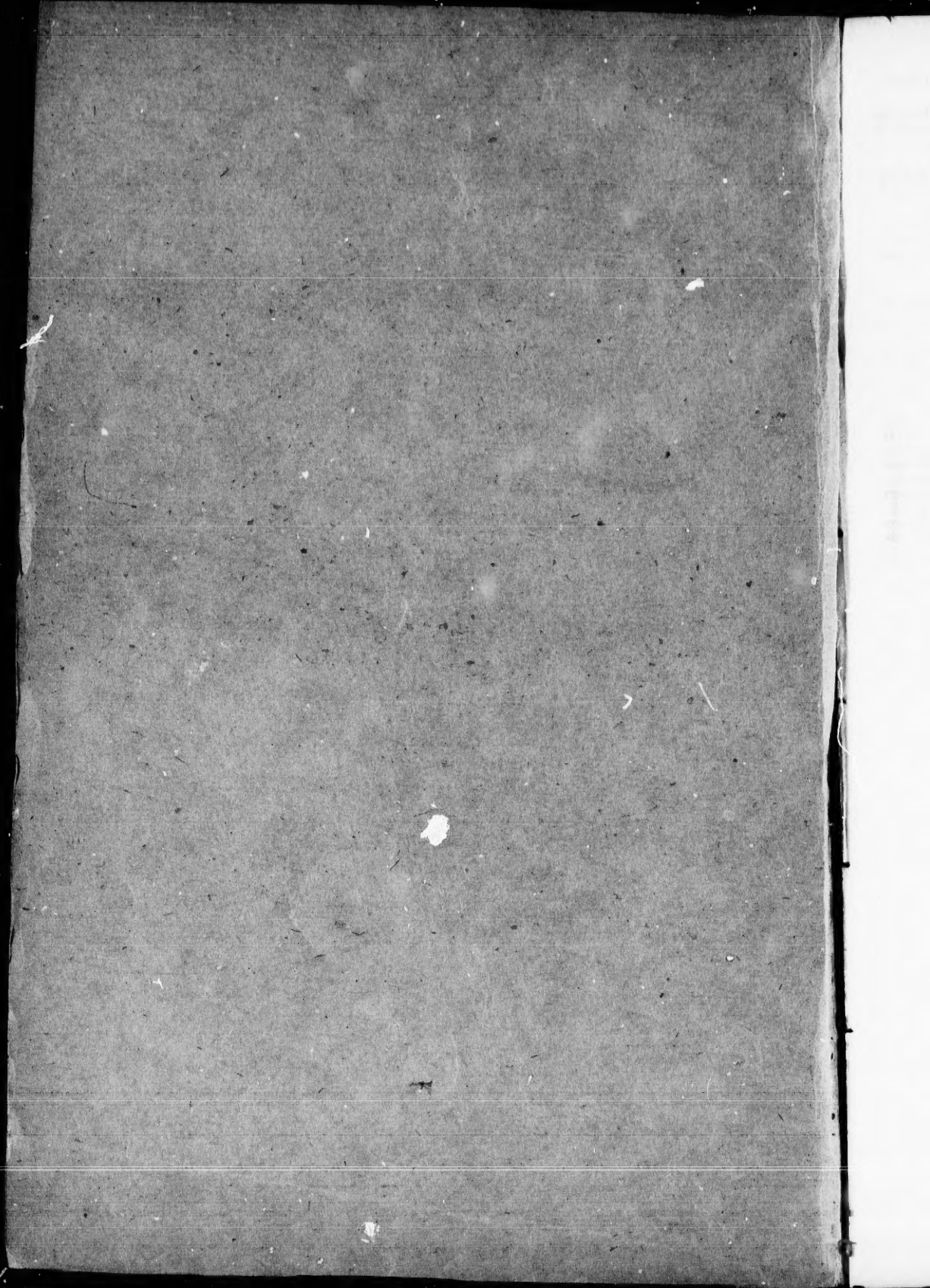
*RESPONDENT'S CASE.*

---

A. STUART, *for Respondent.*

---

*Court of Appeals,*  
JULY SESSION, 1819.



**PROVINCE OF LOWER-CANADA.**  
**COURT OF APPEALS.**

IN A CAUSE

Between

ARCHIBALD DENNY,  
JOHN SHEA, and  
WILLIAM HAMILTON,

(Defendants in the Court below,)

APPELLANTS,

and

DAVID HARVIE,  
(Plaintiff in the Court below,)

RESPONDENT.

**RESPONDENT'S CASE.**

THE Respondent instituted in the Month of January, 1818, an action in the Court of King's Bench for the District of Quebec, against Archibald Denny, one of the Appellants, for the recovery of a sum of £700. Mr. Denny being about to leave the Province, the first process in the cause was a *capias ad respondendum* founded on an affidavit of debt of £600 and upwards—The other two Appellants in this cause, Mr. Shea and Mr. Hamilton, became bail to the Sheriff for Mr. Denny. The condition of the bond is the usual one, that

“ If the said Archibald Denny, William Hamilton or John Shea, or any or either of them, on or before the first day of April then next, in the said Court of King's Bench for the District of Quebec, according to the course and practice of the said Court should, in the said suit or cause, put in or cause to be put in, Special bail or bail to the action of the said David Harvie,” or

“ If the said Archibald Denny, in default of such Special bail, or bail to the action aforesaid, on or before the said first day of April, should surrender himself or be surrendered by the said William Hamilton and John Shea, into the custody of the Sheriff of the District of Quebec for the time being, in discharge of his bail to the said Sheriff, or

“ If the said Archibald Denny, William Hamilton and John Shea, or any or either them, on or before the first day of April, should well and truly pay and satisfy unto the said David Harvie, the sum of £700 with such costs as should be taxed, then, and in either case, the said obligation to be void, *otherwise to remain in full force and virtue.*”

The writ was returned on the first of April—The whole of that term, of the subsequent term of June, and a great portion of the term of October having elapsed without Special bail being put in to the action or any other of the conditions of the bond fulfilled, the Respondent moved the usual rule on the Sheriff, and on the 19th of October obtained an assignment of the bond.

A judgment was subsequently pronounced in the cause for a sum of £650 10 11, sterling, which, by a seizure made in the progress of the suit, was reduced to £538 4 4, currency.

In the month of November, 1818, the Appellants refusing to pay this money, an action was brought on the above bond by the Respondent against the Appellants, for the recovery thereof.

By

REC  
AC  
23  
1775

By the plea of the Appellants, filed in the cause, they expressly admit the bond, and plead,

1. That the condition thereof had been fulfilled, in-as-much as the said Archibald Denny had on the 25th of March, 1819, surrendered himself to the Sheriff of the District of Quebec, for the time being, being in discharge of the said bail.

2. That the said Archibald Denny had frequently offered to surrender himself in discharge of his bail, but that the Sheriff refused to receive him, to wit : on the day and year aforesaid.

3. That the said Archibald Denny, to wit : on the day and year aforesaid offered to surrender himself to the Sheriff of the District of Quebec, but that the said Sheriff allowed him to remain at liberty, and promised to inform him when his surrender would be required, which the said Sheriff had not done.

4. That the sum mentioned in the judgment together with the taxed costs had been fully paid and satisfied unto the said Respondent.

To this plea a general answer was filed by the Respondent.

The cause was inscribed on the roll of *enquêtes*.

The Appellants did not attempt to shew that they had fulfilled any one of the alternatives contained in the condition, neither that they had put in special bail, nor that the Defendant in the original suit had surrendered himself or been rendered, nor that the money had been paid—They offered, however, sufficient evidence to induce a presumption that the Defendant in the original action had had some intention of surrendering himself; that a misunderstanding took place between him and the Sheriff on the subject, but that no actual surrender as required by the bond (the form and manner of which surrender is settled by the rules of practice of the Court below,) had taken place. The court below, therefore, held that the said obligation remained in full force and virtue, and condemned the Appellants to pay to the Respondent the sum of £538 4 4, currency, with interest and costs.

It is from this judgment that the present appeal is brought.

*Quebec, 20th July, 1819.*



plead,

enny had  
ebec, for

discharge  
aforesaid.

o surren-  
ed him to  
d, which

been fully

utives con-  
tant in the  
een paid—  
Defendant  
erstanding  
as required  
ice of the  
igation re-  
ndent the